CONTENTS

PREFACE

CHAPTER

I. INTRODUCTION

1.1 Significance of Control of Administrative Discretion, 1
1.2 Legal Control - By whom 4, 3
1.3 Legal (Judicial) Control of Administrative Discretion in India, 7
   1.3.1 Administrative Discretion and its Sources in India, 8
      1.3.1.1 Constitution as Direct Source, 11
      1.3.1.2 Statutes as Direct Source, 13
   1.3.2 Basic Approach for Controlling Administrative Discretion in India, 16
   1.3.3 Means to Control Administrative Discretion in India, 18
   1.3.4 Plan of the Study, 22

II. CONTROL OVER CONFORMANCE THROUGH THE TECHNIQUE OF CUTTING BACK UNNECESSARY ADMINISTRATIVE DISCRETION

2.1 Introduction, 33
2.2 Development of the Technique, 35
2.3 Governing Rules Framed Under the Technique, 41
   2.3.1 Governing Rules in the Field of Education, 42
   2.3.2 Governing Rules in the Area of Preventive Detention, 45
2.4 Concluding Remarks, 48
III. CONTROL OVER CONFERMENT THROUGH THE
TECHNIQUE OF CONFINING AND CONTROLLING
THE NECESSARY ADMINISTRATIVE DISCRETION

3.1 Introduction, 56
3.2 Control Under Article 14, 57
  3.2.1 Traditional Approach in the
       Interpretation of Article
       14, 58
  3.2.2 Activist Approach in the
       Interpretation of Article
       14, 65
3.3 Control Under Article 19, 76
  3.3.1 Requirement Under Article
       19 (1)(a), 77
  3.3.2 Requirement Under Article
       19(1)(b), 81
  3.3.3 Requirement Under Article
       19 (1) (c), 84
  3.3.4 Requirement Under Article
       19(1)(d), 87
  3.3.5 Requirement Under Article
       19(1) (e), 92
  3.3.6 Requirement Under Article
       19(1) (f), 93
  3.3.7 Requirement Under Article
       19(1) (g), 96
3.4 Control Under Article 21, 103
  3.4.1 Development of Law Requiring
       Procedural Safeguards Under
       Article 21, 104
  3.4.2 Application of the Principle
       Requiring Procedural Safeguards
       Under Article 21, 107
    3.4.2.1 Application of the
            Principle in Other
3.4.2.2 Application of the Principle in the Area of Preventive Detention, 110

3.4.3 Development and Application of the Law Requiring Substantive Safeguards Under Article 21 in the Area of Preventive Detention, 117

3.5 Control under Article 22, 126
3.6 Concluding Remarks, 130

IV. CONTROL OVER THE EXERCISE OF ADMINISTRATIVE DISCRETION IN THE LIGHT OF CONSTITUTIONAL LIMITS

4.1 Introduction, 150
4.2 Control over the Exercise of Administrative Discretion under Article 14, 152

4.2.1 Development of Law based on Dynamic Concept of Article 14, 171

4.2.2.1 Requirement of Fairness in Exercise of Discretion under Article 14, 174

4.2.2.2 Requirement to follow the Guiding Principle, Policy Norms etc, 191

4.2.3 Critical Appraisal of Development of Legal Control Under Article, 14, 224
4.3 Control over the Exercise of Discretion Under Articles 15(4) and 16(4), 231
4.4 Control over Exercise of Discretion Under Article 19, 237
  4.4.1 Control over Exercise of Discretion by Executive Fiat, 239
  4.4.2 Control when Exercise Under the Statute Imposes Unreasonable Restriction, 240
4.5 Control over Exercise of Discretion under Article 21, 245
4.6 Control under Article 22(5), 249
  4.6.1 Development of Law relating to the Grounds of Detention, 250
  4.6.2 Development in the Law pertaining to consideration of Representation, 263
4.7 Concluding Remarks, 268

V. CONTROL OVER EXERCISE OF ADMINISTRATIVE DISCRETION IN THE LIGHT OF STATUTORY LIMITS

5.1 Introduction, 287
5.2 Control under the Doctrine of Substantive Ultra Vires, 291
  5.2.1 General Principles relating to the Approach, 293
    ... 5.2.1.1 Courts do not go into the Merit of the Exercise of Discretion, 293
  5.2.1.2 There is no Unfettered or Absolute Discretion in the Administration, 296
5.2.1.3 Duty to Act Legally Coupled with Discretion, 302

5.2.1.4 Disclosure of Reasons or the Material on which the Decision was based to the Courts, 304

5.2.2 Categories of Substantive Limits, 354

5.2.2.1 Exercise of Discretion for Improper Purposes, 354

5.2.2.2 Exercise of Discretion based on Irrelevant Considerations, and not on Relevant considerations, 359

5.2.2.3 No Evidence Rule, 381

5.2.2.4 Non-Application of Mind, 382

5.2.2.5 Discretion must be exercised by the Person or the Authority in whom it is vested by the Statute, 384

5.2.2.6 Acting Under Dictate, 387

5.2.2.7 Discretion must be exercised by Considering the Merit of each case, 392

5.2.2.8 Exercise of Discretion in Bad Faith or Mala fide, 397
5.3 Control Under the Doctrine of Procedural Ultra Vires, 408

5.3.1 Exercise of Discretion and the concept of Natural Justice, 417

5.3.1.1 General Trend of Development, 418

5.3.1.2 Criteria for Application of Natural Justice, 429

5.3.1.3 Content of the Concept of Natural Justice, 446

5.3.1.4 Are there any Principles Excluding Natural Justice, 465

5.3.1.5 Few Situations where the concept of Natural Justice not extended so far, 473

5.3.1.6 Effect of Failure to Observe Natural Justice: Void or Voidable, 487

5.3.2 Speaking Order or Reasoned Decision, 494

5.4 Control over Exercise of Administrative Discretion and Public Interest Litigation, 499

5.5 Ultra Vires Exercise of Administrative Power and Liability in Damages, 501

5.6 Concluding Remarks, 504

VI. CONTROL IN THE LIGHT OF STATUTORY LIMITS DURING EMERGENCY

6.1 Introduction, 545

6.2 Approach of the English Courts during Emergency, 546

6.3 Approach of the Indian Courts during Emergency, 550
6.3.1 Approach of the Court before 1976, 550
6.3.2 Approach of the Court in 1976, and After, 558
6.4 Concluding Remarks, 585

VII LEGAL CONTROL OF ADMINISTRATIVE DISCRETION IN THE AREA OF PREVENTIVE DETENTION

7.1 Introduction, 594
7.2 Control during Normal Time, 599
  7.2.1 Control at the Stage of Confer-
       ment of Discretion, 600
  7.2.2 Control overexercise of Dis-
       cretion in the light of Constitu-
       tional and Statutory Limits,
       622
7.3 Control during emergency, 631
7.4 Concluding Remarks, 639

VIII CONTROL OVER THE EXERCISE OF ADMINISTRATIVE DISCRETION AND THE DOCTRINE OF PROMISSORY ESTOPPEL

8.1 Introduction, 647
8.2 Application of the Doctrine by English Courts, 649
8.3 Application of the Doctrine by Ameri-
    can Courts, 651
8.4 Application of the Doctrine in India, 653.
  8.4.1 Application against the Govern-
       ment, 653
  8.4.2 Application against Local Author-
       ties, 664
  8.4.3 Application against Universities,
       665
8.5 Limitations on the Doctrine of Promissory Estoppel, 667

8.5.1 Executive Necessity and Promissory Estoppel, 667

8.5.2 Ultra Vires Representation and the Doctrine of Promissory Estoppel, 670

8.5.3 Representation in the Face of Statute, 673

8.5.4 Administration Owes a Duty Under Law, 574

8.5.5 Exercise of Legislative Powers, 677

8.5.6 Fraud, 677

8.5.7 Absence of Necessary Ingredients, 678

8.6 Concluding Remarks, 678

IX. CONCLUSION : FINDINGS AND SUGGESTIONS 588

9.1 Control over Conferment of Discretion, 688

9.1.1 The Technique of Cutting back of Unnecessary Discretion, 689

9.1.2 The Technique of Confining the Necessary Discretion, 691

9.2 Control over Exercise of Administrative Discretion, 701

9.2.1 Control over Exercise in the light of Constitutional Limits, 701

9.2.2 Control over Exercise in the light of Statutory Limits, 707

9.2.2.1 Control during Normal Times, 707

9.2.2.2 Control during Emergency, 716
9.3 Control in the Area of Preventive Detention, 718
9.4 Control over Exercise of Discretion through Doctrine of Promissory Estoppel, 718
9.5 General Remarks, 720

TABLE OF CASES 733

BIBLIOGRAPHY 746